

IN THE SUPREME COURT OF FLORIDA

PAUL O. STOVALL,

Petitioner,

v.

Case No. SC95059

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

SUPPLEMENTAL BRIEF OF RESPONDENT

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CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

### SUMMARY OF ARGUMENT

Under Maddox v. State, 25 Fla. L. Weekly S367, S369, in order for a sentencing error to be considered fundamental, that error must have a qualitative effect on the sentencing process and a quantitative effect on the sentence. This does not exist here. The fact that Stovall was sentenced to consecutive life sentences as a habitual felony offender is not fundamental error because the consecutive nature of his sentences has no effect; Stovall must serve a life sentence. Because the sentencing error here has no net effect on Stovall's sentence, it is not a fundamental sentencing error as contemplated by Maddox, and it need not be corrected.

## ARGUMENT

THE SENTENCING ERROR BELOW DOES NOT  
CONSTITUTE FUNDAMENTAL ERROR UNDER  
MADDOX V. STATE, 25 FLA. L. WEEKLY  
S367 (Fla. May 11, 2000).

Stovall contends that the alleged unpreserved sentencing error below is fundamental error as defined under Maddox v. State, 25 Fla. L. Weekly S367 (Fla. May 11, 2000). He argues that the consecutive habitual felony offender sentences imposed against him constitute a serious and patent error which warrants review. He is mistaken.

In Maddox, this Court held that in determining the seriousness of a sentencing error, "the inquiry must focus on the nature of the error, its qualitative effect on the sentencing process and its quantitative effect on the sentence." Id. at S369 (citing Bain v. State, 730 So.2d 296, 304-305 (Fla. 2d DCA), rev. granted, 735 So.2d 1285 (Fla. 1999)). Thus, a fundamental sentencing error will be one that affects the determination of the length of the sentence such that the interests of justice will not be served if the error remains uncorrected. Id.

This Court went further to set forth specific examples of sentencing errors which are fundamental. For instance, this Court determined that a habitual offender sentence imposed in violation of the statutory requirements will be deemed fundamental. Id. at

S370. That sentence, the Court reasoned, is one which has a quantifiable effect on the length of a defendant's incarceration. Id. at S371. This Court further found that a sentencing error which impacts the length of incarceration, such as the improper imposition of a minimum mandatory sentence, will also be fundamental. Id.

Application of this Court's definition of a fundamental sentencing error to the facts of this case reveals no patent error which requires correction. Here, Stovall was found guilty and sentenced to one count of armed escape, one count of battery on a law enforcement officer, one count of depriving an officer of means of protection or communication, two counts of aggravated assault on a law enforcement officer, three counts of armed kidnapping, two counts of aggravated assault, and one count of possession of a firearm by a convicted felon. (Vol. I, R. 123-156). Stovall was declared a habitual felony offender on each count of armed kidnapping and was sentenced to life imprisonment on each count. (Supp. R., Vol. II, T. 202-203, Vol. I, R. 139-144). The trial court imposed these habitual felony offender life sentences consecutively. (Supp. R., Vol. II, T. 203-204, Vol. I, R. 152).

As indicated supra, under Maddox, a sentencing error will be deemed fundamental if it has a quantitative effect on a sentence.



Maddox, 25 Fla. L. Weekly at S369. Here, the consecutive nature of the life sentences has no net effect on the length of Stovall's overall sentence, which as a habitual felony offender, remains life imprisonment. Accordingly, it does not constitute fundamental error under Maddox. See id.

Moreover, Stovall does not claim that he was improperly declared a habitual felony offender. He only objects to the imposition of the consecutive life terms, arguing that the consecutive habitual felony offender sentences violate Hale v. State, 630 So.2d 521 (Fla. 1993), cert. denied, 513 U.S. 909 (1994), and are illegal. The state acknowledges that Hale prohibits consecutive habitual offender sentences, but that case does not address the harm of consecutive sentences when life imprisonment is imposed.

Nevertheless, the issue before this Court remains whether Stovall's sentence constitutes a fundamental error which should be corrected. Applying the definition of Maddox to the facts presented here, there is no fundamental error as Stovall has been properly sentenced to life imprisonment as a habitual felony offender. The consecutive life terms have no effect and are harmless. Because there is no effect on the overall sentence, the life terms do not constitute fundamental error and need not be

corrected.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court affirm the decision of the district court of appeal in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing brief on jurisdiction has been furnished by delivery to Susan Fagan, counsel for Petitioner, this \_\_\_\_\_ day of June, 2000.

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